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SUPREME COURT, U. S.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. ~~1002~~ 70-54

VICTORY CARRIERS, INC., SS SAGAMORE HILL
and
GULF STEVEDORE CORP., PETITIONERS
v.
BILL LAW, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF ON BEHALF OF THE AMERICAN TRIAL LAWYERS ASSOCIATION AS AMICUS CURIAE

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Blanchard Press, Inc., Boston, Mass. — Law Printers

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OCTOBER TERM, 1971

No. 1092

VICTORY CARRIERS, INC., SS SAGAMORE HILL
and
GULF STEVEDORE CORP., PETITIONERS

v.

BILL LAW, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF ON BEHALF OF THE AMERICAN TRIAL LAWYERS ASSOCIATION AS AMICUS CURIAE

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The American Trial Lawyers Association, Admiralty Section, respectfully prays that this Honorable Court sustain the decision in the above-entitled action rendered by the United States Court of Appeals for the Fifth Circuit.

I.
Consent of Parties

All of the parties in the above-entitled action have given their written consent to the filing of this Brief Amicus Curiae, and such written consent has been filed with the Clerk of this Honorable Court.

II.
Standing

The American Trial Lawyers Association is a national bar association whose membership exceeds 25,000 lawyers who are primarily engaged in the practice of law on behalf of plaintiffs in personal injury litigation. The admiralty section of this association includes most of the attorneys who specialize in the maritime personal injury law. These attorneys represent seamen, longshoremen and other maritime workers who are engaged in a hazardous industry and, as such, are recognized as having a special status by virtue of legislation and decisions of the courts.

This Association and the people it represents are directly affected by the judicial application of the doctrine of unseaworthiness to dockside personnel injured as a result of stevedore's equipment. More specifically, this Association is vitally concerned with this appeal, not only for the instant case, but also for the effect this result will have on similar cases now existing throughout the country.

As a resolution of the issues in this case will materially affect the outcome of many others, this case assumes a position of major importance to thousands of maritime workers, the maritime industry and the admiralty bar.

The American Trial Lawyers Association, Admiralty Section, has filed briefs Amicus Curiae with this Honorable Court on behalf of seamen and longshoremen in other cases.

III.
Question Presented

Where a longshoreman is injured by stevedoring equipment while on a dock in the course of loading a vessel, does that longshoreman possess a cause of action against the vessel owner for unseaworthiness?

IV.
Summary of Argument

The federal courts of the United States may exercise admiralty jurisdiction by virtue of Section 1333 of Title 28 of the United States Code. The scope of that jurisdiction is prescribed by both the General Maritime Law and the Extension of Admiralty Jurisdiction Act, 62 Stat. 496, 46 U.S.C. 740 (1964) (hereinafter cited as Extension Act). The scope of admiralty jurisdiction is sufficiently expansive to include a cause of action for unseaworthiness arising out of personal injuries sustained by a longshoreman on a dock as a result of a malfunction of stevedore's equipment in the course of loading a vessel.

Jurisdiction exists by virtue of the General Maritime Law because said cause of action arose out of injuries caused by a ship and reflected a "maritime relationship." Jurisdiction exists by virtue of the Extension Act because the vessel "caused" the aforesaid injury. The presence of the vessel causes loading operations with predictably resultant injuries to maritime workers. In fact, the presence of the vessel resulted in certain loading equipment to become appurtenant to that vessel.

A cause of action for unseaworthiness arose when a longshoreman in the service of the ship was injured while in an area of risk as a result of a defect in an appurtenance of that ship.

V.
Argument

RESPONDENT POSSESSES A CAUSE OF ACTION FOR UNSEAWORTHINESS WHICH CAUSE OF ACTION IS SUBJECT TO THE ADMIRALTY JURISDICTION OF THE FEDERAL COURTS.

The jurisdictional issue has been fully argued in litigants' brief. Respondent's brief properly analyzes both the historical aspects of this question and factors in the case at bar. We believe, however, that some further remarks are in order. Admiralty jurisdiction in the case at bar may be predicated on either the General Maritime Law or the Extension Act.

Under the General Maritime Law all that is required is that a valid cause of action be pleaded, which cause of action has a maritime relation. Jurisdiction in unseaworthiness cases arises out of a maritime status or relation and is therefore recognizable by the maritime substantive law whether it arises on sea or on land.

> *Gutierrez* v. *Waterman Steamship Corp.*, 373 U.S. 206 (1963); *Strika* v. *Netherlands Ministry of Traffic*, 185 F.2d 555 (2d Cir. 1950); *Gebhard* v. *S.S. Hawaiian Legislator*, 425 F.2d 1303 (9th Cir. 1970).

Jurisdiction in the instant case also exists by virtue of the Extension Act. The Act provides that:

> "The Admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damages or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." Act of June 19, 1948, ch. 526, 62 Stat. 496, 46 U.S.C. § 740 (1964).

Traditionally, the word "caused" has been interpreted expansively.

Gutierrez v. *Waterman S.S. Corp.*, supra at 210.

This expansive approach has resulted in the rule that if the faulty land-based equipment which caused the injury complained of was involved in the loadings or unloadings of the vessel, that equipment became an appurtenance of the vessel.

See, e.g., *Huff* v. *Matson Navigation Co.*, 338 F.2d 205 (9th Cir. 1964), *cert denied,* 380 U.S. 943 (1965); *Gebhard* v. *S.S. Hawaiian Legislator,* 425 F.2d 1303 (9th Cir. 1970).

Once the equipment is designated as being "appurtenant", jurisdiction exists.

Gebhard v. *S.S. Hawaiian Legislator,* supra.

It has been noted, however, that the requirement of calling certain equipment "appurtenances" of the vessel has resulted in sometimes peculiar reasoning in lower court opinions.

See Petitioners Brief, at pp. 15-17.

A different interpretation of the word "caused" in the Extension Act could well avoid such peculiarities. As the *Gutierrez* opinion suggests, the word "caused" should be interpreted expansively. If the view were taken that the ship was the primary reason for, or cause of, the dockside activity, then it could be said that the ship "caused" the activity. It could not be disputed that any injury resulting

from such activity would therefore be "caused" by the ship. This rationale is justified by analogy to statistical analysis conducted in other industries which predict, for example, the number of accidental deaths likely to occur during the construction of a building. Although a decision to erect a building may not directly "cause" the death of a construction worker, such a decision results in a statistically predictable number of deaths of construction workers. The decision to construct a building causes a predictably certain number of construction workers to be injured in the course of that construction. Similarly, but for the presence of a ship with its inherently attendant hazards, a statistically predictable number of dockside personnel would not be injured. In both situations, it can be said that the building of a building and the service of a ship at dockside "caused" certain injuries.

Once the existence of jurisdiction is recognized it becomes appropriate to determine whether the respondent possesses a cause of action for unseaworthiness.

The Brief for the Respondent most adequately represents the present status of the law and accurately concludes that Law possesses a cause of action for unseaworthiness. Law was in the service of the ship doing work traditionally done by seamen when he was injured by a piece of equipment not reasonably fit for its intended purpose but which could be classified as an appurtenance of the ship.

> See generally, *Seas Shipping Co.* v. *Sieracki,* supra; *Gutierrez* v. *Waterman S.S. Corp.,* supra.

Respondent's Brief correctly identified the two central issues: was Law in the service of the ship and was Law injured by equipment appurtenant to the ship. In so doing Respondent focused upon the nature of the job being performed by Law at the time his cause of action arose. It was

revealed that Law was intimately involved with the loading and unloading of the ship using equipment directly servicing the ship. Law's very job status involved his being frequently aboard the vessel. Given such facts, it becomes apparent that Law was exposed to the hazards identified in both *Sieracki and Gutierrez.* Liability of the shipowner for the injury caused by the unseaworthy equipment would therefore follow.

Reference to the hazardous nature of Law's occupation seems justified where Law was injured while in the service of the ship and *not remote in time or place* from that ship. It has long been recognized that the doctrine of unseaworthiness was created in response to the especially hazardous conditions surrounding maritime related industries and services.

> See, e.g. *Mahnich* v. *Southern S.S. Co.,* 321 U.S. 96 (1944); *Seas Shipping Co.* v. *Sieracki,* supra at 94, 95 (1946); *Dixon* v. *The Cyrus,* 7 Fed. Cas. 755 (No. 3930) (Pa. 1789).

The shipowner

> "...is in position, as the worker is not, to distribute the loss in the shipping community which receives the service and should bear its cost. These and other considerations arising from the hazards which maritime service places upon men who perform it, rather than any consensual basis of responsibility, have been the paramount influences dictating the shipowner's liability for unseaworthiness as well as its absolute character."
>
> *Seas Shipping Co.* v. *Sieracki,* supra at 94.

> "That the owner seeks to have ... (loading and unloading) ... done with the advantages of more modern divisions of labor does not minimize the worker's hazard and should not nullify his protection."
> Id. at 96.

Statistics verify the existence of hazards present on or about docks during the loading and unloading of vessels. These hazards are especially acute for longshoremen.

> "Longshoremen have one of the highest accident frequency rates in American industry. The rates for longshoremen in the Port of New York are higher than the rates of every other major industry with the possible exception of logging."
> Note, Risk Distribution and Seaworthiness, 75 Yale L.J. 1174, 1186 (1966). See also, National Academy of Sciences, National Research Council, Maritime Cargo Transportation Conference Longshore Safety Survey Report, (1956); New York Shipping Association, Safety Bureau, Annual Accidents (1965); Statistics Reported Under Public Law 85-742, Five Year Comparison of Longshore-Injury Frequency Rates (1970).

However, as all parties have noted, the nature of the hazards to which longshoremen are exposed have been radically altered through the years by virtue of technological advances and specialization of labor.

(Brief for the Petitioners, p. 23).

With such specialization, it has become increasingly difficult to identify those jobs which would be considered work traditionally done by seamen. Similarly, with technological advancement new equipment has become available to assist in serving a vessel dockside. This new equipment has

not been easily identifiable as appurtenant to the ship in the traditional sense. Only the risk of injury has remained comparatively constant through the evolution of ship-servicing techniques. Because of this more or less continual risk exposure, reference to the "area of risk" as a standard of review in applying the doctrine of unseaworthiness seems justified.

> The "area of risk" standard was recognized in Note, *Risk Distribution and Seaworthiness,* 75 Yale L.J. 1174, 1190-92 (1966). Note also that the opinion in *Gutierrez* v. *Waterman S.S. Corp.,* supra at 211-12, speaks in terms of risk exposure.

The courts have applied the "area of risk" standard by means of certain meaningful tests designed to determine the applicability of the doctrine of unseaworthiness. First and foremost, the cause of action must accrue to a person injured while in the service of the ship. This test is not new.

> See, e.g., *Seas Shipping Co.* v. *Sieracki,* supra at 95, 97.

A determination depending upon whether an individual acted for the benefit of the ship encourages uniformity and also has the effect of de-emphasizing the requirement of attempting to analogize a person employed in a modern work classification with a person doing the work "traditionally done by seamen."

Second, the "area of risk" standard assumes the jurisdictional requisite in the extension act which limits admiralty jurisdiction to those causes of action arising not remote in time or place from the ship.

See generally, *Gutierrez* v. *Waterman S.S. Corp.*, supra at 210.

"Remoteness" is ascertained by reference to the "area of risk" surrounding a vessel. In the instant case, it could be decided that Law was in an area of risk as established by statistical analysis and reference to the type of dangers to which Law was exposed.

Compare Chagois v. *Lykes Bros. S.S. Co., Inc.*, 432 F.2d 388 (5th Cir. 1970), cert. pending as No. 70-64, and *Spann* v. *Lauritzen*, 344 F.2d 204 (3rd Cir.), cert. den. 382 U.S. 938 (1965), *with Daniel* v. *Skibs A/S Hilda Knudsen*, 368 F.2d 178 (3rd Cir.), cert. den. 386 U.S. 990 (1966).

Finally, acknowledgement of the significance of the "area of risk" standard de-emphasizes the requirement that the equipment not reasonably fit for its intended use and causing the injury be an "appurtenance" of the vessel. Such a de-emphasis constitutes a recognition that modern loading and unloading operations involve specialized equipment unknow at the inception of the doctrine of unseaworthiness.

See generally Note, Risk Distribution and Seaworthiness, 75 Yale L.J. 1174, 1191 (1966).

If the Admiralty and Maritime Law is capable of fashioning a new remedy when one is needed, striking down state doctrines offensive to the Admiralty and Maritime Law when necessary, and providing fair and equitable treatment to all connected with maritime activity because of inequality of bargaining power, then certainly it is capable of providing justice in a practical world by recog-

nizing that special risks require special protection. This concept is rooted in the bedrock of history.

The law must be active and dynamic with the capability of growth to include technological advance. No one can doubt that the equipment currently in use in dockside activities must of necessity be used to service the vessel. It is the adoption of new principles from technological advances together with the regard for tradition that provides the stability necessary for the administration of justice.

VI.
Conclusion

For the foregoing reasons the American Trial Lawyers Association respectfully asks this Court to recognize that the Admiralty and Maritime Law applicable to this case was developed in response to the hazards inherent in the nature of the work performed by maritime personnel and therefore to affirm the decision rendered by the United States Court of Appeals for the Fifth Circuit.

American Trial Lawyers Association
By: David B. Kaplan, *Chairman of Admiralty Section*

VII.
Certificate of Service

I, David B. Kaplan, representing Amicus Curiae the American Trial Lawyer's Association and as a member of the Bar of the Supreme Court of the United States, hereby certify that on the 13th day of October, 1971, I served three (3) copies of the foregoing Brief on Victory Carriers, Inc., Gulf Stevedore Corp., Inc. and Bill Law by mailing to same in duly addressed envelopes with first class postage prepaid to Hon. George Wood, 510 Van Antwerp Building, Mobile, Alabama 36601, Hon. W. Boyd Reeves, 1101 Merchants National Bank Building, Mobile, Alabama 36602, and Ross Diamond, Jr., 610 Van Antwerp Building, Mobile, Alabama 36601.

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